1970, and (ii) if applicable, the following disclosure:

''REQUIRED DISCLOSURE

Unless the [buyer] and the [seller] have agreed to the contrary, the [buyer's] securities are likely to be commingled with the [seller's] own securities during the trading day. The [buyer] is advised that, during any trading day that the [buyer's] securities are commingled with the [seller's] securities, they will be subject to liens granted by the [seller] to its clearing bank and may be used by the [seller] for deliveries on other securities transactions. Whenever the securities are commingled, the [seller's] ability to resegregate substitute securities for the [buyer] will be subject to the [seller's] ability to satisfy the clearing lien or to obtain substitute securities.''.

(2) For hold-in-custody repurchase transactions entered into before the effective date for obtaining a written repurchase agreement in accordance with paragraph (c) of this section, a financial institution that is subject to §403.5(d) shall furnish the counterparty with a separate interim disclosure document containing: (i) The disclosure referred to in §403.5(d) concerning the inapplicability of deposit insurance, and (ii) if applicable, the following disclosure:

''REQUIRED DISCLOSURE

Unless the [buyer] and the [seller] have agreed to the contrary, the [buyer's] securities are likely to be commingled with the [seller's] own securities during the trading day. The [buyer] is advised that, during any trading day that the [buyer's] securities are commingled with the [seller's] securities, they will be subject to liens granted by the [seller] to third parties and may be used by the [seller] for deliveries on other securities transactions. Whenever the securities are commingled, the [seller's] ability to resegregate substitute securities for the [buyer] will be subject to the [seller's] ability to satisfy any lien or to obtain substitute securities.''.

(3) In the case of hold-in-custody repurchase transactions initiated before August 31, 1987 and terminating on or after August 31, 1987, the disclosure document described in this paragraph (d) must be mailed to the counterparties involved on or before August 31, 1987. In the case of a hold-in-custody repurchase transaction initiated on or after August 31, the disclosure document described in this paragraph (d) must be provided to the counterparty involved no later than the day on which the first hold-in-custody repurchase transaction is initiated on or after August 31, 1987, unless the disclosure has already been provided to the counterparty in accordance with the preceding sentence.

(e) *Existing term repurchase transactions.* Notwithstanding paragraphs (b), (c) and (d) of this section, the requirements of §§403.4 and 403.5(d) (with respect to hold-in-custody repurchase transactions), with the exception of the requirements to confirm the substitution of securities subject to a repurchase transaction, shall not be applicable to any repurchase transaction, initiated on or before August 31, 1987, that, by its terms, matures on a specific date after August 31, 1987.

[52 FR 27947, July 24, 1987, as amended at 53 FR 28986, Aug. 1, 1988]

PART 404—RECORDKEEPING AND PRESERVATION OF RECORDS

Sec.

AUTHORITY: 15 U.S.C. 78o–5 (b)(1)(B), (b)(1)(C), (b)(2), (b)(4).

SOURCE: 52 FR 27952, July 24, 1987, unless otherwise noted.

§404.1 Application of part to registered brokers and dealers.

Compliance by a registered broker or dealer with §240.17a–3 of this title (pertaining to records to be made), §240.17a–4 of this title (pertaining to preservation of records), §240.17a–13 of this title (pertaining to quarterly securities counts) and §240.17a–7 of this title (pertaining to records of non-resident brokers or dealers), including provisions in those rules relating to OTC

derivatives dealers, constitutes compliance with this part.

[71 FR 54411, Sept. 15, 2006]

§ 404.2 Records to be made and kept current by registered government securities brokers and dealers; records of non-resident registered government securities brokers and dealers.

(a) Every registered government securities broker or dealer shall comply with the requirements of § 240.17a–3 of this title (SEC Rule 17a–3), with the following modifications:

(1) References to ''broker or dealer'' and ''broker or dealer registered pursuant to Section 15 of the Act'' include registered government securities brokers or dealers.

(2) References to §§ 240.17a–3, 240.17a–4, 240.17a–5, and 240.17a–13 mean such sections as modified by this part and part 405 of this chapter.

(3) (i) Except in the case of a government securities interdealer broker who is subject to the financial responsibility rules of § 402.1(e) of this chapter and a registered government securities broker or dealer that is a futures commission merchant registered with the CFTC, paragraph 240.17a–3(a)(11) is modified to read as follows:

''(11) A record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of liquid capital and total haircuts, as of the trial date, determined as provided in § 402.2 of this title; *provided however*, that such computation need not be made by any registered government securities broker or dealer unconditionally exempt from part 402 of this title. Such trial balances and computations shall be prepared currently at least once a month.''.

(ii) For a government securities interdealer broker who is subject to the financial responsibility rules of § 402.1(e) of this chapter, references to § 240.15c3–1 include modifications contained in § 402.1(e) of this chapter.

(4) Paragraph 240.17a–3(b)(1) is modified to read as follows:

''(1) This section shall not be deemed to require a government securities broker or dealer registered pursuant to section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A)) to make or keep such records of transactions cleared for such government securities broker or dealer as are customarily made and kept by a clearing broker or dealer pursuant to the requirements of §§ 240.17a–3 and 240.17a–4: *Provided*, that the clearing broker or dealer has and maintains net capital of not less than $250,000 (or, in the case of a clearing broker or dealer that is a registered government securities broker or dealer, liquid capital less total haircuts, determined as provided in § 402.2 of this title, of not less than $250,000) and is otherwise in compliance with § 240.15c3–1, § 402.2 of this title, or the capital rules of the exchange of which such clearing broker or dealer is a member if the members of such exchange are exempt from § 240.15c3–1 by paragraph (b)(2) thereof.''

(5) The undertaking in § 240.17a–3(b)(2) is modified to read as follows:

''The undersigned hereby undertakes to maintain and preserve on behalf of [registered government securities broker or dealer] the books and records required to be maintained by [registered government securities broker or dealer] pursuant to 17 CFR 404.2 and 404.3 and Rules 17a–3 and 17a–4 under the Securities Exchange Act of 1934 and to permit examination of such books and records at any time or from time to time during business hours by examiners or other representatives of the Securities and Exchange Commission, and to furnish to said Commission at its principal office in Washington, DC, or at any regional office of said Commission specified in a demand made by or on behalf of said Commission for copies of books and records, true, correct, complete, and current copies of any or all, or any part, of such books and records. This undertaking shall be binding upon the undersigned, and the successors and assigns of the undersigned.''.

(6) Section 240.17a–3(c) is modified to read as follows:

''(c) This section shall not be deemed to require a government securities broker or dealer to make or keep such records as are required by paragraph (a) reflecting the sale and redemption